

Opinion No. 66-20

February 10, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Senator William C. Gallagher, Majority Floor Leader, New Mexico State Senate, Santa Fe, New Mexico

QUESTION

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May municipalities or counties lease on a long term basis, equipment or other personal property?

CONCLUSION

Yes.

OPINION

{*23} ANALYSIS

It is elementary that municipalities and counties have only those powers bestowed upon them by constitutional provision or legislative enactment. It is also true that a person cannot recover on a contract with a municipality or county unless there is authority for the municipality or county to enter into contracts. **Ebelmann v. Board of Commissioners of Laflere County**, 110 Okla. 172, 237 P. 94.

Municipalities and counties in New Mexico have been given express authority to contract. Section 15-36-1 (4) and Section 14-17-1 (b), N.M.S.A., 1953 Compilation. This is generally true of all municipalities and counties. **Ward County v. Balerud**, 72 N.D. 173, 5 N.W. 2d 425.

A lease is merely a contract. Black's Law Dictionary, 4th Edition.

It is also generally settled today that one board of county commissioners can bind by contract succeeding boards of county commissioners if the obligation is entered into in good faith. **Jessup v. Hinchman**, 77 Ind. App. 460, 133 N.E. 853; **Heberer v. Board of Comm'rs of Chaffee County**, 88 Colo. 159, 293 P. 349.

Consequently, the only questions left to consider are whether there are any specific constitutional provisions, or statutory provisions prohibiting such contracts. We can find none.

{*24} You have specifically asked whether the Bateman Act (§ 11-6-6, N.M.S.A., 1953 Comp.) prohibits such contracts. It is our opinion that it does not. That act prohibits municipalities and counties from contracting any debt during any current year which is not and cannot be paid that year. A lease of equipment does not obligate or contract for a debt for a municipality or county except to the extent of each yearly installment during any fiscal year and consequently so long as each yearly installment is within budgetary allowances for that year the Bateman Act is not violated. Succeeding lease installments do not come due until subsequent years and do not do violence to the Bateman Act. The lease does not obligate the county for the total lease amount in any one year. No debt is contracted for in any one year that cannot be paid in that year.

We have found no constitutional provision prohibiting such contracts. We note in passing Article IX Section 10 of the New Mexico Constitution pertaining to county indebtedness, but would point out that that section merely prohibits borrowing money and, consequently, is not relevant here. Compare **Iverson v. Canyon County**, Idaho (1949), 204 P. 2d 259.

Leases as such do not have to be bid unless they provide for optional or mandatory passage of title during their term. Section 6-5-20 N.M.S.A., 1953 Comp. (P.S.).